IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SANATKUMAR JAYANTILAL

Versus

COMMISSIONER OF GIFT TAX

Appearance:
SERVED for Petitioner
MR MIHIR JOSHI with MR MANISH R BHATT
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 18/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question for the opinion of this Court under Section 26(1) of the Gift Tax Act, 1958 (hereinafter referred to as "the said Act").

"Whether, in view of the facts and circumstances of the case, the Tribunal was right in law in holding that the applicant was not entitled to the exemption under Section 5(1)(xii) of the Gift Tax Act of gifts given to daughters of the Karta of the assessee - HUF for the purposes of education?"

The assessee, which is an HUF, filed return of gifts under Section 13(1) of the Act, on 12th July, 1974, showing value of taxable gifts as "nil". The assessee had made gifts of Rs. 1 lac each on 7.10.1971 to Jankiben Sanatkumar and Vaishali Sanatkumar, who were the minor daughters of the Karta - Shri Sanatkumar Jayantilal. These gifts were claimed to be exempt under Section 5(1)(xii) of the said Act, on the ground that they were made for the education of the children. The age of the two minor daughters in whose favour the gifts were made, was around 8 years and 5 years.

2. The Gift Tax Officer, after making the necessary enquiry pursuant to the notice issued under Section 15(2) of the Act, held that these gifts cannot be treated to have been made for the education of the children, since no gift deed was executed and the children were all through out staying with their parents, which showed that a sum of Rs. 1 lac for each child gifted by the HUF, was excessive. It was further held that the gifts were made by the HUF and not by the Karta Sanatkumar in his individual capacity and therefore, HUF not being a person within the meaning of Section 5(1)(xii) capable of having children of its own, these gifts were not exempt under that clause. Relying upon the decision of the Punjab and Haryana High Court in the case of C.G.T Patiala V. Harbhajan Singh and Sons, reported in [1979] 119 I.T.R 542 (P&H), wherein the Court had held that the provisions of Section 5(1)(viii) of the Act were not attracted to the transaction of gift made by HUF to the spouse of the Karta, the GTO held that the analogy was applicable even in the case of children of Karta and therefore, the provisions of Section 5(1)(xii) cannot be applied to the gifts made by the assessee HUF. The GTO held that gifts made by the HUF were therefore, liable to Gift Tax under the said Act.

3. The assessee carried the matter in appeal before the Appellate Assistant Commissioner of Income Tax, who confirmed the order of the GTO and dismissed the appeal by his order dated 16.1.1981. Thereafter, the matter was carried by the assessee to the Tribunal and the Tribunal

while holding that the gifts in question were reasonable and that it would not make much difference that there were no deed of gifts executed, came to the conclusion that just as a Hindu undivided family cannot have a wife, it cannot have daughters also. It was held that Section 5(1)(xii), which speaks of "his children", would not be applicable to the case of HUF assessee, because an HUF cannot have any children.

4. In the present case, the two gifts in question were made by the HUF through Sanatkumar, who was the Karta of the HUF. The gifts were not made by Sanatkumar in his individual capacity. Therefore, the question that directly arises in context of the exemption to such gifts made for the purposes of education under Section 5(1)(xii) is, whether such a gift made by the HUF in favour of the daughters of the Karta would merit exemption under the said clause. The Tribunal has found that the gifts in question were reasonable and that the fact that no gift deed was executed, would not alter the situation. The Tribunal noted that the intention to make the gift for education purposes was spelt out from the evidence on record. We therefore proceed to consider whether such gifts made by the HUF can be exempted from Gift Tax under Section 5(1)(xii) of the Act.

5. Under Section 2(xii), the word "gift" is defined so as to mean the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that Section. The word "person" as defined in Section 2(xviii) includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not; unless the context otherwise requires. Section 5 (1) deals with exemption in respect of certain gifts and the relevant clause (xii) with which we are concerned, reads as follows:-

> "5(1) - Gift-tax shall not be charged under this Act in respect of gifts made by any person --
>
> xxx xxx xxx
>
> (xii) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case;

xx xxx xxx"

In context of the said provision, it was contended on behalf of the Revenue that the words "his children", which occur in the clause would indicate that for the purpose of the said exemption gift only by a living person was contemplated and that in the context the word "person" occurring in Section 5(1) in the opening words would not include HUF or any artificial person. It was submitted that just as an HUF cannot have it's spouse, it cannot also have it's children. It was also submitted that the fact that the Karta of the HUF happens to be the father of the donees, would not attract the said exemption clause, because the gifts were admittedly made by the HUF. The amounts were not transferred by the father of the donees in his individual capacity, but were transferred in his capacity as a Karta and therefore, according to the learned Counsel for the Revenue, the exemption was not attracted. Reliance was placed in support of these contentions by him on the decisions in Commissioner of Gift Tax,Tamil Nadu-IV Vs. R.M.D.M. Ranganathan Chettiar, reported in 133 ITR 890, Commissioner of Gift Tax, Patiala Vs. Harbhajan Singh and Sons, reported in 119 ITR 542 and Commissioner of Gift Tax Vs. B.K. Sampangiram, reported in 160 ITR 188. It was submitted that even if the assessee was a sole co-parcener and competent to gift away the property, it would nonetheless be a gift by the HUF and therefore, would not fall in the exemption clause (xii) of Section 5(1) of the Act.

6. As noted above, the word "person" defined in clause (xviii) of Section 2 would include a Hindu undivided family, unless the context otherwise requires. It will be noted from the various clauses of Section 5(1) that wherever the legislature wanted to restrict the benefit of exemption to only particular types of persons, then specific mention is made restricting the benefit to those categories only. This can be noted, for example, from Clause (iia) which refers to such person who is an individual not resident in India or clause (iib) which refers to a person resident outside India, or clause (iic) referring to a citizen of India; or clause (iiic) which refers to an individual or HUF. In clause (xii) of Section 5(1), no such categories are specified. But from the expression "his children" it is contended by the Revenue that the only category of persons who can make gifts to their children that can fall under this clause, would be living persons. The word "his" importing masculine gender would obviously be taken to include females. The question whether in context of clause

(xii), the word "person" which occurs in the opening words of Section 5(1) would include HUF, is therefore required to be examined by us.

The word "children" is plural of "child", which means `a young human being below the age of puberty' as per the Concise Oxford Dictionary, Ninth Edition - page 227. It also means `one's son or daughter (at any age)'. Then there are nebulous meanings like `child of God' or `child of nature', with which we are not concerned. In the background of a living being, children would therefore mean "his" or "her" children. However, when the word "person" includes HUF in context of such Hindu undivided family, the word "his" occurring in clause (xii) of Section 5(1) will have to be read as "its". When we talk of children of a Hindu undivided family, it would obviously mean such of the members of the family , who are children. There would be no incongruity in the context of clause (xii) of Section 5(1) if it is held that the children who are the members of the Hindu undivided family are children of a `person' within the meaning of this clause. Therefore, if a gift is made by the HUF for the education of the children belonging to that HUF, that should merit exemption similar to those gifts which are made by living persons to their children. In this construction, we have taken it as a basis that a Hindu undivided family is a larger concept than a co-parcenery and it would consist of all persons lineally descended from a common ancestor including their wives and unmarried daughters. We have also kept in mind that the joint and undivided family is a normal condition of Hindu society and that in its peculiar ethos it would be incumbent upon the HUF to look after the welfare of it's members, more particularly children, in context of their education. When you talk of children of HUF, it is not a meaningless expression and it would clearly identify such children who are the members of the joint Hindu family. Therefore, when the Hindu undivided family as a legal person gifts any property to such children who are its members, in our opinion such gifts would be eligible to exemption under clause (xii) of Section 5(1) of the Act.

7. The learned Counsel appearing for the Revenue with his usual fairness, has taken us through various authorities having some bearing on the subject but all these authorities (CGT Vs. K.B. Manickam Gupta 128 ITR 598; M.S.P. Rajah Vs. CGT - 134 ITR 1, and the aforesaid three cases mentioned while narrating his arguments) were not concerned with clause (xii) of Section 5(1). The Tribunal had placed reliance on the decision of Harbhajan Singh & Sons (supra), in which the

Punjab and Haryana High Court had held that the provisions of Section 5(1) (viii) would not be attracted to a transaction of gift contemplated by the Section because there cannot be any spouse of the HUF as such. Since we are not concerned with any gift in favour of a spouse, we need not express any opinion in context of the ratio of this decision. We would however, say that to speak of children belonging to HUF, does not lead to any incongruity and in the context of HUF, children belonging to such family who are its members, would be a specific and identifiable matter that can be easily comprehended unlike the expression `spouse of the HUF'. Even if there may not be a spouse of HUF as such, we are of the view that when HUF is included in the definition of `person', in the context of clause (xii) of Section 5(1), children of such HUF would only mean that such of the members of the HUF who are children, and therefore, the gifts by HUF in favour of its children would be exempt under Clause 5(1)(xii) of the Act, as held by us above.

8. In view of the above discussion, we hold that the Tribunal was in error in law in holding that the applicant HUF was not entitled to the exemption under Section 5(1)(xii) of the said Act in respect of gifts given to the daughters of the Karta of the HUF for the purposes of education.

The question referred to us is therefore, answered in the negative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

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*/Mohandas